



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

JUL 28 2005

(AE-17J)

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Michael S. McMahon
McMahon DeGulis LLP
The Caxton Building, Suite 650
812 Huron Road
Cleveland, Ohio 44115-1126

Dear Mr. McMahon:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves violations at Euclid's Cleveland, Ohio facility, Rust-Oleum's Pleasant Prairie, Wisconsin facility, and Republic's Medina, Ohio facility, CAA Docket No. CAA-05-2005-0041. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUL 28 2005.

Pursuant to paragraph 45 of the CAFO, the Respondents must pay the civil penalty within 30 days of JUL 28 2005. Your check must display the case docket number, CAA-05-2005-0041 and the billing document number, 050305045.

Please direct any questions regarding this case to Mony Chabria, Associate Regional Counsel, (312) 886-6842.

Sincerely yours,

Linda Rosen

Linda Rosen, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

The Euclid Chemical Company,
Cleveland, Ohio;
Rust-Oleum Corporation,
Pleasant Prairie, Wisconsin;
Republic Powdered Metals, Inc.,
Medina, Ohio,

Respondents.

) Docket No. **CAA-05-2005 0041**

) **Consent Agreement and Final**
) **Order**

US EPA
REGIONAL OFFICE
REGION V

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CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action commenced and concluded simultaneously pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b), and 22.18(b).

2. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brings this administrative action seeking a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

3. The Respondents are The Euclid Chemical Company

(Euclid), Rust-Oleum Corporation (Rust-Oleum), and Republic Powdered Metals, Inc. (Republic), corporations doing business in Cleveland, Ohio; Pleasant Prairie, Wisconsin; and Medina, Ohio, respectively.

II. STATUTORY AND REGULATORY BACKGROUND

4. Under Section 183(e) of the Act, 42 U.S.C. § 7511b(e), the Administrator of U.S. EPA promulgated regulations establishing requirements regarding the manufacture of certain consumer or commercial products, the use of which may result in the release of volatile organic compounds (VOCs).

5. Pursuant to Section 183(e) of the Act, 42 U.S.C. § 7511b(e), on September 11, 1998, U.S. EPA promulgated National VOC Emission Standards for Architectural Coatings at 40 C.F.R. Part 59, Subpart D (the Architectural Coatings Standards).

6. The Architectural Coatings Standards apply to each "architectural coating," as that term is defined at 40 C.F.R. § 59.401, manufactured on or after September 13, 1999 for sale or distribution in the United States.

7. The Architectural Coatings Standards, at 40 C.F.R. § 59.401, define "manufacturer" as a person that produces, packages, or repackages architectural coatings for sale or distribution in the United States. Section 59.401 further states that for purposes of applying this definition, divisions of a company, subsidiaries, and parent companies are considered to be

a single manufacturer.

8. The Architectural Coatings Standards, at 40 C.F.R. § 59.402(a), require each manufacturer and importer of any architectural coating subject to Subpart D to ensure that the VOC content of the coating does not exceed the applicable limit in Table 1 of Subpart D.

9. The Architectural Coatings Standards, at 40 C.F.R. § 59.404(a), state that each manufacturer and importer of any architectural coating subject to the provisions of Subpart D may designate a limited quantity of coatings to be exempt from the VOC content limits in Table 1 of Subpart D and the exceedance fee provisions of Section 59.403 of Subpart D.

10. The Architectural Coatings Standards, at 40 C.F.R. § 59.404(a)(1), state that the total amount of VOC contained in all the coatings selected for exemption must be equal to or less than 23 megagrams for the period of time from September 13, 1999 through December 31, 2000, 18 megagrams in the year 2001, and 9 megagrams per year in the year 2002 and each subsequent year.

11. The Architectural Coatings Standards, at 40 C.F.R. § 59.405(a)(2), require each manufacturer and importer of any architectural coating subject to Subpart D to provide on the label or lid of the container in which they sell or distribute the coating, a statement of the manufacturer's recommendation regarding thinning of the coating.

12. The Architectural Coatings Standards, at 40 C.F.R. § 59.405(a)(3), require each manufacturer and importer of any architectural coating subject to Subpart D to display the VOC content of the coating on the label or lid of the container in which they sell or distribute the coating. The VOC content must be indicated either as the actual VOC content of the coating, or as the VOC content limit with which the coating is required to comply, and does comply.

13. The Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation, with a maximum of \$220,000, for violations of the Architectural Coatings Standards that occurred between January 31, 1997 and March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation, with a maximum of \$270,000, for violations that occurred on and after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

III. FACTUAL ALLEGATIONS

14. Euclid, Rust-Oleum, and Republic are subsidiaries of a common parent company.

15. Euclid owns and operates a coating manufacturing facility at 19218 Redwood Road, Cleveland, Ohio.

16. Euclid manufactures and distributes at least 62 coatings, including, but not limited to, "Weatherguard." These coatings are recommended for field application to stationary

structures and their appurtenances.

17. "Weatherguard" has a VOC content of 762 g/L and is subject to a VOC content limit of 600 g/L.

18. At all times relevant to this CAFO, Euclid has manufactured and distributed "architectural coatings," as defined in 40 C.F.R. § 59.401.

19. Euclid submitted exceedance fee/tonnage exemption reports to U.S. EPA on February 21, 2001, February 21, 2002, February 13, 2003, and February 16, 2004 for architectural coatings manufactured in the year 1999/2000, 2001, 2002, and 2003, respectively.

20. In the February 21, 2001, February 21, 2002, February 13, 2003, and February 16, 2004 reports, Euclid claimed a 23, 18, 9, and 9 megagram tonnage exemption, respectively, for "Weatherguard."

21. Rust-Oleum owns and operates a coating manufacturing facility at 8691 109th Street, Pleasant Prairie, Wisconsin.

22. Rust-Oleum manufactures and distributes at least 105 coatings, including, but not limited to, those listed in Table A. These coatings are recommended for field application to stationary structures and their appurtenances.

Table A.

Product #	Description	VOC Content (g/L)		Manufactured in:		
		Actual	Limit	2001	2002	2003
6031	FLECTO #60 CLEAR SEMI GL	473	450	X	X	X
9021	FLECTO #90 GLOSS	463	450	X	X	X
9031	FLECTO #90 CLEAR GL	463	450	X	X	X
9121	FLECTO #91	494	450	X		
9131	FLECTO #91 INT SATIN	489	450	X	X	X
9431	FLECTO #94 SEMI-GLOSS OUT	460	450		X	X
90031	FLECTO #900 GLOSS	514	450	X	X	X
100031	FLECTO #1000 CLEAR SEMI GL	519	450	X		X
110021	FLECTO #1100 PRO CLEAR SAT	510	450	X	X	
110031	FLECTO #1100 SATIN	510	450	X	X	X
130021	FLECTO #1300 PRO FLR FINISH	503	450	X	X	
130031	FLECTO #1300 GLOSS	503	450	X	X	X
130121	FLECTO #1301 SEMI GL	510	450	X	X	
130131	FLECTO #1301 SEMI GL	510	450	X	X	X
130221	FLECTO #1302 SATIN	509	450	X		
130231	FLECTO #1302 SATIN	508	450	X	X	X
201642	PEGARUST	500	450	X	X	X

23. In its August 6, 2004 response to U.S. EPA's June 10, 2004 information request, RPM provided the data in Table A.

24. At all times relevant to this CAFO, Rust-Oleum has manufactured and distributed "architectural coatings," as defined

in 40 C.F.R. § 59.401.

25. Rust-Oleum submitted exceedance fee/tonnage exemption reports to U.S. EPA on February 28, 2002, February 25, 2003, and February 27, 2004 for architectural coatings manufactured in the year 2001, 2002, and 2003, respectively.

26. In the February 28, 2002, February 25, 2003, and February 27, 2004 reports, Rust-Oleum calculated the exceedance fee after claiming the 18, 9, and 9 megagram tonnage exemption, respectively, for the coatings listed in Table A.

27. On December 22, 2004, U.S. EPA issued a Finding of Violation to Euclid and Rust-Oleum.

28. Republic owns and operates a coating manufacturing facility at 2628 Pearl Road, Medina, Ohio.

29. Republic manufactures and distributes at least 60 coatings, including, but not limited to: "Goodyear Roof Resaturant #701," "Barrow-kote-Plus," "Goodyear Wet Surface Plastic Cement," "Triple-Duty Aluminum," "Goodyear Aluma-tek," "Goodyear Aluma-tek II," "Goodyear Supernamel," "Neoprene Patching Cement," "Solargard Ultra-Acrylic Elastomeric Coating," and "High Build Reflective Coating." These coatings are recommended for field application to stationary structures and their appurtenances.

30. The labels of "Goodyear Roof Resaturant #701," "Barrow-kote-Plus," "Goodyear Wet Surface Plastic Cement," "Goodyear

Aluma-tek," "Goodyear Aluma-tek II," "Goodyear Supramel," "Neoprene Patching Cement," "Solargard Ultra-Acrylic Elastomeric Coating," and "High Build Reflective Coating" did not portray Republic's recommendation on thinning until April 2004. Of these coatings, all but "Solargard Ultra-Acrylic Elastomeric Coating" and "High Build Reflective Coating" were discontinued in May 2004.

31. The labels of "Goodyear Roof Resaturant #701," "Barrow-kote-Plus," "Goodyear Wet Surface Plastic Cement," and "Triple-Duty Aluminum" did not portray the VOC content until April 2004. All of these coatings were discontinued in May 2004.

32. On March 29, 2004, U.S. EPA issued a Finding of Violation to Republic.

IV. VIOLATIONS

33. As set forth above, Euclid and Rust-Oleum, considered as a single manufacturer, exceeded the VOC content limits of some of their architectural coatings without paying the proper amount of exceedance fees, because each claimed a tonnage exemption, constituting a violation of 40 C.F.R. § 59.402(a) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

34. As set forth above, Republic failed to provide a statement of its recommendation on thinning on its containers of "Goodyear Roof Resaturant #701," "Barrow-kote-Plus," "Goodyear Wet Surface Plastic Cement," "Goodyear Aluma-tek," "Goodyear

Aluma-tek II," "Goodyear Suprenamel," "Neoprene Patching Cement," "Solargard Ultra-Acrylic Elastomeric Coating," and "High Build Reflective Coating," constituting a violation of 40 C.F.R. § 59.405(a)(2) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

35. As set forth above, Republic failed to provide the VOC content on its containers of "Goodyear Roof Resaturant #701," "Barrow-kote-Plus," "Goodyear Wet Surface Plastic Cement," and "Triple-Duty Aluminum," constituting a violation of 40 C.F.R. § 59.405(a)(3) and Sections 183 and 111(e) of the Act, 42 U.S.C. §§ 7511b and 7411(e).

V. STIPULATIONS

36. Respondents admit the jurisdictional allegations and neither admit nor deny the factual allegations described herein.

37. Respondents consent to the issuance of this CAFO and the assessment of a civil penalty, as outlined in Section VI of this CAFO.

38. Respondents consent to all of the terms and conditions in this CAFO.

39. Respondents waive their right to request a hearing as provided at 40 C.F.R. § 22.15(c).

40. Respondents waive their right to contest the allegations in this CAFO, and waive their right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

41. Euclid, Rust-Oleum, and Republic certify that they are complying fully with the Architectural Coatings Standards at their coating manufacturing facilities in Cleveland, Ohio, Pleasant Prairie, Wisconsin, and Medina, Ohio, respectively.

42. Respondents and U.S. EPA agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

VI. CIVIL PENALTY

43. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as justice may require), the size of Respondents' business, the economic impact of the penalty on the Respondents' businesses, the Respondents' full compliance history and good faith efforts to comply, the duration of the violations, payments by the Respondents of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

44. Based on an analysis of the above factors, including the Respondents' cooperation, prompt return to compliance, and Rust-Oleum's agreement with U.S. EPA to reduce the VOC content of each of the architectural coatings in Table A to at or below 450 g/L by December 31, 2005, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$70,312

(Seventy Thousand Three Hundred Twelve Dollars).

45. The Respondents must pay the \$70,312 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," in accordance with paragraphs 46 and 47 below, within 30 days of the effective date of this CAFO.

46. The Respondents must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

47. A transmittal letter, stating Respondents' names, complete addresses, the case docket number, and the billing document number must accompany the payment. Respondents must write the case docket number and the billing document number on the face of the check. Respondents must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Mony Chabria, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

48. This civil penalty is not deductible for federal tax

purposes.

49. If the Respondents do not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C.

§ 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

50. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C.

§ 3717. The Respondents will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. The Respondents will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C.

§ 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

VII. AGREEMENT TO REFORMULATE

51. As part of the settlement of the violations alleged in Section IV of this CAFO, Rust-Oleum agrees to reduce the total VOC content of the architectural coatings identified in Table A to levels at or below 450 g/L. Rust-Oleum agrees to accomplish this reduction in VOC content on six of the coatings listed in

Table A within 30 days of the effective date of this CAFO. Rust-Oleum agrees to accomplish this reduction in VOC content on an additional five coatings listed in Table A by no later than December 31, 2005. Rust-Oleum agrees to accomplish this reduction in VOC content on the final six coatings listed in Table A by no later than June 30, 2006.

52. By each of the three dates identified in paragraph 51, Rust-Oleum must notify U.S. EPA as to whether Rust-Oleum has accomplished the VOC content reduction. Rust-Oleum's notifications must be sent to:

Raymond Cullen (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

Mony Chabria (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

If Rust-Oleum fails to accomplish the reformulation of its products, as specified in paragraph 51, by the deadlines indicated in paragraph 51, Rust-Oleum will discontinue its efforts to reformulate and pay an additional civil penalty of \$14,062, within 30 days of such failure. Payment of this additional civil penalty will be made in the manner indicated in Paragraphs 45-47.

VIII. GENERAL PROVISIONS

53. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Sections 111(e) and 113 of the Act, 42 U.S.C. §§ 7411(e) and 7413, for the violations alleged in Section IV of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of the Respondents arising from the violations alleged in this CAFO or liability related to other violations of the Act. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by U.S. EPA, and it is the responsibility of the Respondents to comply with such laws and regulations.

54. Nothing in this CAFO restricts U.S. EPA's authority to seek the Respondents' compliance with the Act and other applicable laws and regulations.

55. This CAFO does not affect the Respondents' responsibility to comply with the Act and other applicable federal, state, and local laws and regulations.

56. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine the Respondents' "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

57. The terms of this CAFO bind the Respondents, their

officers, directors, servants, employees, agents, successors, and assigns, including, but not limited to, subsequent purchasers.

58. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.


59. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

60. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

61. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection Agency,
Complainant**

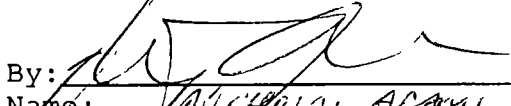
Date: 7/26/2005

By: 
Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CAA-05- 2005 0041

**The Euclid Chemical Company,
Respondent**

Date: 7-15-05

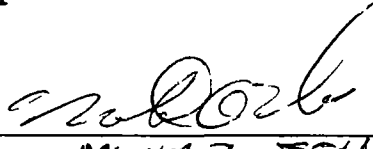
By: 
Name: NICHOLAS ADAMS
Title: Vice President

CONSENT AGREEMENT AND FINAL ORDER

The Euclid Chemical Company, Cleveland, Ohio; Rust-Oleum Corporation, Pleasant Prairie, Wisconsin; and Republic Powdered Metals, Inc., Medina, Ohio
Docket No.

Rust-Oleum Corporation,
Respondent

Date: 7/18/05

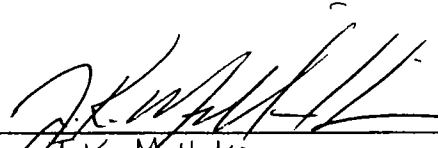
By: 
Name: MICHAEL TELLOR
Title: PRESIDENT

CONSENT AGREEMENT AND FINAL ORDER

The Euclid Chemical Company, Cleveland, Ohio; Rust-Oleum Corporation, Pleasant Prairie, Wisconsin; and Republic Powdered Metals, Inc., Medina, Ohio
Docket No.

**Republic Powdered Metals, Inc.
Respondent**

Date: 7-19-2005

By: 
Name: J.K. Milliken
Title: Vice President & General Manager

CONSENT AGREEMENT AND FINAL ORDER

**The Euclid Chemical Company, Cleveland, Ohio; Rust-Oleum
Corporation, Pleasant Prairie, Wisconsin; and Republic Powdered
Metals, Inc., Medina, Ohio
Docket No.**

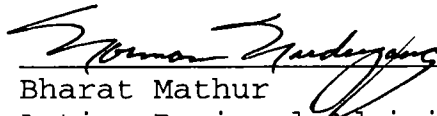
CONSENT AGREEMENT AND FINAL ORDER

The Euclid Chemical Company, Cleveland, Ohio; Rust-Oleum Corporation, Pleasant Prairie, Wisconsin; and Republic Powdered Metals, Inc., Medina, Ohio
Docket No.

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Dated: 7/27/05

for 
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-05- 2005 0041

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number

CAA-05-2005 0041

to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, by placing them in the custody of the United States Postal Service, to:

Michael S. McMahon
McMahon DeGulis LLP
The Caxton Building, Suite 650
812 Huron Road
Cleveland, Ohio 44115

Nicholas Adams, Vice President
The Euclid Chemical Company
19218 Redwood Road
Cleveland, Ohio 44110-2799

Michael Tellor, President
Rust-Oleum Corporation
11 Hawthorn Parkway
Vernon Hills, Illinois 60061

J.K. Milliken, Vice President and General Manager
Republic Powdered Metals, Inc.
3735 Green Road
Beachwood, Ohio 44122

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION V

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RECEIVED
REGIONAL HEARING
CLERK
JUL 28 2005

on the 28th day of July, 2005.

Shanee Rucker
Shanee Rucker
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 70010320000614479758